Public Prosecutor v Rajisegar a/l Munisamy

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B–09–14 OF 2005

GOPAL SRI RAM, TENGKU BAHARUDIN SHAH AND JAMES FOONG JJCA

6 SEPTEMBER 2005

Criminal Procedure — Police investigation — Remand — Period of — Whether magistrate empowered to grant entire or substantial part of prescribed remand period on one application — Discretionary power of magistrate acting under s 117 Criminal Procedure Code — Exercise of such discretionary power, guidelines on

The respondent was arrested in connection with a 'road rage' incident which resulted in the death of another. He was produced before a magistrate who had sight of the police investigation diary. Based on the grounds contained in the diary, the magistrate acting under s 117 of the Criminal Procedure Code, ordered the respondent to be remanded in police custody for 13 days. However, the High Court decided to act in revision upon receiving a letter from the respondent's counsel. The judicial commissioner ('JC'), having examined the record of proceedings concluded that the 13-day remand was defective and thus reduced the period to 11 days. Apparently, the JC was of the view that s 117 of the CPC did not permit a magistrate to grant the whole of the prescribed period of remand on one application. The prosecution appealed contending that there was nothing in s 117 which prohibited a magistrate from granting the whole or a substantial part of the prescribed remand period. Counsel for the respondent countered by submitting inter alia that s 117 did not empower a magistrate to grant a single order of remand for the whole or substantial part of the prescribed remand period.

Held, allowing the appeal:

(1) Section 117 of the CPC confers a discretion on the magistrate when approached by the police for an order of remand. The section must not thus be construed as to destroy the discretion intended by Parliament. Such construction would constitute an impermissible act of encroachment by the judicial arm of the Federation (see para 12).

(2) A magistrate who is called upon to exercise his or her power under s 117 must act cautiously and with circumspection. The magistrate must not accept ipsi dixit of the police officer requesting the remand. The magistrate must anxiously scrutinize the material that is produced and record his or her reasons for making the order. The necessity for reasons is obvious — the order for remand made by the magistrate is subject to revision by the High Court which is entitled to know why the order was made (see para 15); *Ramli bin Salleh v Inspector Yahya bin Hashim* [1973] 1 MLJ 54 followed.

(3) In the instant case, the magistrate did not address her mind sufficiently to the facts presented. She did not give any reasons whatsoever for granting the 13-day remand. That itself was sufficient ground for the learned JC's interference in the order of remand. Whereas the Court of Appeal would not agree with the principle stated by the JC on the application of s 117, the court would agree with the way the JC acted. On the facts, she was entirely justified in interfering with the magistrate's order of remand (see para 17).

[Bahasa Malaysia summary

Responden telah ditangkap berkaitan dengan satu kejadian 'road rage' yang telah menyebabkan kematian seseorang. Beliau telah dibawa ke hadapan majistret yang telah merujuk kepada diari siasatan polis. Berdasarkan alasan-alasan yang terkandung dalam diari itu, majistret bertindak di bawah s 117 Kanun Acara Jenayah ('KAJ'), memerintahkan responden ditahan reman di bawah kawalan polis selama 13 hari. Namun, Mahkamah Tinggi memutuskan untuk bertindak secara semakan setelah menerima sepucuk surat daripada peguam responden. Pesuruhjaya kehakiman ('PK'), setelah meneliti rekod prosiding memutuskan bahawa reman 13 hari itu adalah cacat dan oleh itu mengurangkan kepada tempoh 11 hari. Sebenarnya, PK berpendapat bahawa s 117 KAJ tidak membenarkan seorang majistret membenarkan keseluruhan tempoh yang ditetapkan untuk reman untuk satu permohonan. Pihak pendakwa merayu dengan berhujah bahawa tiada apa-apa dalam s 117 yang menghalang majistret daripada membenarkan keseluruhan atau sebahagian daripada tempoh reman yang ditetapkan. Peguam bagi pihak responden membantah dengan berhujah, antara lain, bahawa s 117 tidak memberi kuasa kepada majistret untuk membenarkan satu perintah reman untuk keseluruhan atau sebahagian daripada tempoh reman yang ditetapkan.]

Diputuskan, membenarkan rayuan tersebut:

(1) Seksyen 117 KAJ memberikan budi bicara ke atas majistret apabila didatangi polis untuk satu perintah reman. Seksyen tersebut tidak patut ditafsirkan sebagai melenyapkan budi bicara yang diniatkan oleh Parlimen. Pembentukan sedemikian akan membentuk satu tindakan yang tidak membenarkan pencerobohan oleh pihak kehakiman Persekutuan (lihat perenggan 12).

(2) Seorang majistret yang dipanggil untuk menggunakan kuasa beliau di bawah s 117 hendaklah bertindak dengan berhati-hati dan berwaspada. Majistret itu tidak patut menerima *ipsi dixit* pegawai polis yang memohon reman itu. Majistret hendaklah meneliti bahan yang dikemukakan dan merekodkan alasan beliau dalam membuat perintah. Keperluan untuk alasan tersebut adalah jelas — perintah untuk reman dibuat oleh majistret adalah tertakluk kepada semakan oleh Mahkamah Tinggi yang berhak mengetahui kenapa perintah itu dibuat (lihat perenggan 15); *Ramli bin Salleh v Inspector Yahya bin Hashim* [1973] 1 MLJ 54 diikut.

(3) Dalam kes semasa, majistret tidak memberi perhatian sepenuhnya kepada fakta-fakta yang dikemukakan. Beliau tidak memberikan apa-apa alasan untuk

membenarkan reman 13 hari itu. Itu dengan sendirinya alasan yang memadai untuk campur tangan PK yang bijaksana dalam perintah reman itu. Manakala Mahkamah Rayuan tidak bersetuju dengan prinsip yang dinyatakan oleh PK berdasarkan permohonan s 117, mahkamah bersetuju dengan cara PK bertindak. Berdasarkan fakta tersebut, beliau sepenuhnya dijustifikasikan untuk campur tangan dengan perintah reman majistret itu (lihat perenggan 17).

Notes

For cases on remand for police investigation generally, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 2577–2578.

Cases referred to

Ramli bin Salleh v Inspector Yahya bin Hashim [1973] 1 MLJ 54 (folld)

Legislation referred to

Criminal Procedure Code ss 117, 119
Penal Code s 302

Appeal from: Application for Criminal Revision No 43–3 of 2005 (High Court, Shah Alam)

Wong Chiang Kiat (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Gobind Singh Deo (Suraj Singh with him) (Karpal Singh & Co) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] This is the judgment of the court.

[2] On 25 January this year, an incident took place in Subang Jaya. It concerned an assault by one road user on another, resulting in the death of the latter. It is what we now commonly call a case of road rage.

[3] The respondent in this appeal was arrested. Investigation commenced.

[4] On 4 February 2005, the respondent was produced before the magistrate at the Petaling Jaya Magistrate Court. The investigation diary relevant to this case was made available to the magistrate. Based on the grounds appearing therein, the learned magistrate acting under s 117 of the Criminal Procedure Code ('the Code'), granted the police a period of 13 days to hold the respondent in remand under police custody.

[5] The respondent's solicitor was unhappy with this result. He wrote to the judge in Shah Alam. A few days later, the learned judicial commissioner acting in revision,

called for the record of the proceedings. Having examined it, she came to a conclusion that the remand of 13 days was defective and she reduced the remand period to 11 days.

[6] The respondent now faces a charge of murder under s 302 of the Penal Code.

[7] This appeal is, strictly speaking, quite academic so far as the merits are concerned but the prosecution is most concerned with certain observations made by the learned judicial commissioner in the course of her judgment on the provisions of s 117 of the Code. According to the learned judicial commissioner, s 117 does not permit a magistrate to grant the whole of the prescribed period of remand upon one application.

[8] Our s 117 reads as follows:

> 117 Procedure where investigation cannot be completed within twenty-four hours.
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> (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by s 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.
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> (2) The Magistrate before whom an accused person is produced under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a Magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.
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> (3) A Magistrate authorizing under this section detention in custody of the police shall record his reasons for so doing.

We think it is also important to produce s 119 of the Code:

> 119 Diary of proceedings in investigation.
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> (1) Every police officer making a police investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth —
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> (a) the time at which the order, if any, for investigation reached him;
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> (b) the time at which he began and closed the investigation;
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> (c) the place or places visited by him; and
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> (d) a statement of the circumstances ascertained through his investigation.
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> (2) Notwithstanding anything contained in the Evidence Act 1950, an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect any such diary:
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> Provided that if the police officer who has made the investigation refers to the diary for the purposes of s 159 or s 160 of that Act, such entries only as the officer has referred to shall

A be shown to the accused, and the court shall at the request of the officer cause any other entries to be concealed from view or obliterated.

B **[9]** It is the contention of the prosecution that the learned judicial commissioner fell into error in the way she construed s 117. According to the learned DPP, there is nothing in s 117 which as a matter of principle prohibits the grant of the whole period or a substantial part thereof prescribed in that section by way of remand.

C **[10]** Learned counsel for the respondent on the other hand said that the section when properly construed does not do that. In other words, it does not permit the magistrate to grant the whole or substantial part of the period prescribed by the section.

D **[11]** He relied heavily on the phrase 'from time to time' appearing in sub-s (2) of s 117. He said that that phrase envisages more than one application to be made by the police. According to the learned counsel, it follows that the police is not entitled to ask for and the magistrate is not empowered to grant a single order of remand for the whole or substantial part of the period.

E **[12]** With respect, we are unable to agree with the learned judicial commissioner and the submission of the learned counsel for the respondent. The section by itself confers a discretion on the magistrate when if approached by the police for an order of remand. Accordingly, the section must not be construed as to destroy the discretion as intended by Parliament. This would be an impermissible act of encroachment by the judicial arm of the Federation.

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[13] In the course of the argument, we were referred to the decision of Syed Agil Barakbah J in the case of *Ramli bin Salleh v Inspector Yahya bin Hashim* [1973] 1 MLJ 54 at p 56, where the learned judge whose views in such matter as the present is entitled to great respect:

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> I must say something about s 117 of the Code having regard to cl (4) of art 5 of the Constitution. The section should be treated as an exception to s 28 which requires a police officer who has arrested a person without warrant to produce him without unnecessary delay and in any case within twenty-four hours after arrest before a magistrate. *The discretionary*
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> H *power to order the remand of the prisoner should be exercised sparingly because it requires the magistrate to record his grounds for making the order. The section contemplates more than one application for the remand order and the maximum period for remand as a whole is fifteen days. The magistrate should not allow the full period as a matter of course but should weigh the seriousness of the offence and determine whether a shorter period would be sufficient to enable the police to complete investigation.* If so, such shorter period should be given. That would in a
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> I way help to hasten investigation to ensure speedy trial and prevent the prisoner from being deprived of his fundamental liberty for a longer period than necessary. It comes as no surprise that the prisoner in this case has been released earlier. (Emphasis added.)

[14] We entirely agree with the foregoing statement of principle.

[15] In our judgment, the magistrate who is called upon to exercise his/her power under s 117 must act cautiously and with circumspection. He/she must not accept ipsi dixit of the police officer requesting the remand. He/she must anxiously scrutinize the material that is produced and record his/her reasons for making the order. The necessity for reasons is obvious. For, the order for remand made by the magistrate is subject to revision by the High Court which is entitled to know why the order was made.

[16] Looking at the grounds put forward in the present case, it would appear that the learned magistrate did not address her mind sufficiently to the facts presented. It does not appear that she has given any reasons whatsoever for granting the 13 days remand in the present case. That in itself is sufficient ground for the learned judicial commissioner's interference in the order of remand.

[17] To sum up, we do not agree with the principle stated by the learned judicial commissioner on the application of s 117. However, we do agree with the way she acted. On the facts, she was entirely justified in interfering with the learned magistrate's order of remand.

Appeal allowed.

Reported by John Paul Simon